

Amendments to the Drawings:

The attached three replacement sheets of drawings include changes to Figures 1-3. Within the replacement sheets, reference numerals have been added to each element shown in Figures 1-3. No new matter has been added.

Attachment: Replacement Sheets

Remarks/Arguments

Claims 1-49 were pending. Within the Office action, the Specification and claims 3, 6, 11, 15, 17, 35, 37, and 38 are objected to; claims 42 and 45 are rejected under 35 U.S.C. § 112, ¶ 2; claims 1-11, 13, 14, 16, 17, 21, 24-28, 31, and 34-39 are rejected under 35 U.S.C. § 102(b); and claims 12, 15, 18-20, 22, 23, 29, 30, 32, and 33 are rejected under 35 U.S.C. § 103(a). By way of the above amendments, claims 1, 4, 9, 25, 31, 35, 37-39, 41, and 44 have been amended; claim 15 has been canceled; and claims 50 and 51 have been added. Accordingly, claims 1-14 and 16-51 are now pending. The Applicants respectfully request reconsideration in light of the amendments made above and the arguments made below.

Objections to the Specification

Within the Office action, the abstract is objected to because it repeats language from the title. In response to this objection, the abstract has been amended to delete language from the title. Accordingly, the objection to the abstract should be withdrawn.

Within the Office action, the disclosure is objected to under 37 C.F.R. § 1.74 because the detailed description does not refer to any of the drawings listed in the “Brief Description of the Drawings.” In response to this objection, the detailed description has been amended to refer to the drawings and to describe the elements shown in them. No new matter has been added by the amendments to the disclosure. Accordingly, the objection to the disclosure under § 1.74 should be withdrawn.

Objections to the claims

Within the Office action, it is stated that if claims 1, 4, and 9 are found allowable, their respective dependent claims 3, 6, 11, 15, and 17 will be objected to under 37 C.F.R. § 1.75 as being substantial duplicates. The Applicants respectfully disagree with this characterization of the claims.

Claims 1, 4, and 9 are all directed to a method for communicating data. Claim 1 and thus its dependent claim 3, which incorporates all the limitations of claim 1, recites *sending* a plurality of one or more measurement packets; claim 4 and thus its dependent claim 6 recites *receiving* a plurality of one or more measurement packets; claim 9 and thus its dependent claims 11, 15, and 17 recites sending *and* receiving pluralities of measurement packets. Sending packets differs from receiving packets; each, by itself, differs from sending *and* receiving packets. Contrary to what is stated in the Office action, the difference between sending and receiving packets is not

merely “a slight difference in wording”; the two are entirely different functions. Thus, claims 3 and 6 are not substantial duplicates of each other, and neither of these is a substantial duplicate of claim 11, 15, or 17. Accordingly, if claims 1, 4, and 9 are allowed, claims 3, 6, 11, 15, and 17 should not be objected to under § 1.75.

Claim 15 has been canceled, so its objection is moot.

Within the Office action, claims 35, 37, and 38 are all objected to for inadvertently reciting “or” or “of” when the other word was intended. These claims have all been amended to correct these typographical errors. Accordingly, the objections to these claims should be withdrawn.

Rejections under 35 U.S.C. § 112, ¶ 2

Within the Office action, claims 42 and 45 are rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, it is stated that it is unclear how the first and second packets recited in these claims can be the same packet. It is stated that the phrase “same packet” will be interpreted “as being the same type of measuring packet (i.e. packet measuring data loss, packet measuring delay).” The Applicants submit that a different interpretation is apparent from the claims.

Claim 42, by way of the limitations recited in claims 39-41, recites a first plurality of measurement packets that are communicated from a plurality of devices across a first plurality of one or more paths. Claim 42 also recites a second plurality of measurement packets that are received over a second plurality of one or more paths by a second sub-plurality of one or more devices. The same packet can be both communicated across one set of paths and received over a second set of paths. In other words, one packet from a first group of sent packets can be the same packet from a second group of received packets. Here, the term “same packet” recited in claim 42 refers to the same packet, not merely the same type of measuring packet. Because claim 42 particularly points out and distinctly claims what the Applicants regard as their invention, the rejection of claim 42 under 35 U.S.C. § 112, ¶ 2, should be withdrawn.

Claim 45 recites a limitation similar to that in claim 42. Thus, the rejection of claim 45 under § 112, ¶ 2, should be withdrawn for similar reasons.

Rejections under 35 U.S.C. § 102

Within the Office action, claims 1-11, 13, 14, 16, 17, 21, 24-28, 31, and 34-49 are rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,793,976 (Chen). The Applicants respectfully traverse these rejections.

Chen is directed to performance monitoring in a computer network. Chen discloses modifying management packets at intermediate nodes along the network to reflect local payload performance at the intermediate nodes, performances such as node-by-node delays and node-by-node lost packets. In some embodiments, Chen discloses storing in a data packet each local payload performance to indicate performance at each particular intermediate node. In other embodiments, Chen discloses accumulating the local payload performance at each intermediate node to keep a running total and storing that total in a data packet. Chen does not disclose measurement packets that include control data directing a receiver of a measurement packet to change one or more configuration parameters of the receiver, as recited in the independent claims of the present invention.

Claim 1 is directed to a method for communicating data within measurement traffic. The method includes sending a plurality of one or more measurement packets over a plurality of one or more paths, each of the plurality of one or more paths traversing at least a portion of an internetwork. Each of the plurality of one or more measurement packets includes information for a receiver of the measurement packet to compute measurements of performance characteristics of at least a portion of the path of the measurement packet and data. The data includes control data directing a receiver of the measurement packet to change one or more configuration parameters of the receiver. The data also includes one or more of measurement statistics, a generic communication channel, and network information. As explained above, Chen does not disclose measurement packets as recited in claim 1, which include control data directing a receiver of the measurement packet to change one or more configuration parameters of the receiver. For at least this reason, claim 1 is allowable over Chen.

Like the independent claim 1, the independent claims 4, 9, and 39 all also recite measurement packets that include control data directing a receiver of the measurement packet to change one or more configuration parameters of a receiver. Thus, for the same reasons that claim 1 is allowable over Chen, claims 4, 9, and 39 are all also allowable.

Claims 2 and 3 both depend on claim 1 and are thus both allowable as depending on an allowable base claim. Claims 5-8 depend on claim 4 and are thus all allowable as depending on an allowable base claim. Claims 10, 11, 13, 14, 16, 17, 21, 24-28, 31, and 34-38 all depend on

claim 9 and are thus allowable as depending on an allowable base claim. Claims 40-49 all depend on claim 39 and are thus all allowable as depending on an allowable base claim.

Kompella

Within the Office action, in the rejection of claim 15, it is stated that U.S. Patent No. 5,892,754 (Kompella) “discloses control directing a receiver of the measurement packet to change one or more configuration parameters of the receiver (see column 8, lines 40-50).” This statement mischaracterizes Kompella. Kompella is directed to monitoring data flow and having a user application control the data flow. (*See, e.g.*, Kompella, col. 5, line 65, to col. 6, line 2) Kompella discloses that in response to network monitoring, the user application can change the method of coding data to reduce bandwidth, can pack more signal samples into a packet to reduce the effects of jitter (col. 8, lines 48-50), or can reduce the frame rate of video signals (col. 5, lines 44-46). Kompella discloses that a sender of data, the user application, monitors system parameters so that it can be reconfigured to transmit data. Kompella does not disclose that a receiver of measurement packets receives control data as recited in the claims of the present invention.

Rejections under 35 U.S.C. § 103

Claims 12, 15, 18, 22, 29, and 30

Within the Office action, claims 12, 15, 18, 22, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen as applied to claim 11, and further in view of U.S. Patent No. 5,892,754 (Kompella). The Applicants respectfully traverse these rejections.

As explained above, claim 11 is allowable. Claims 12, 18, 22, 29, and 30 all depend on claim 11. Accordingly, claims 12, 18, 22, 29, and 30 are all allowable as depending on an allowable base claim. Claim 15 has been canceled, so its rejection is moot.

Claim 20

Within the Office action, claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen as applied to claim 9, and further in view of U.S. Patent No. 6,385,198 (Ofek). The Applicants respectfully traverse this rejection.

As explained above, claim 9 is allowable. Claim 20 depends on claim 9. Accordingly, claim 20 is allowable as depending on an allowable base claim.

Claims 19, 23, 32, and 33

Within the Office action, claims 19, 23, 32, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen as applied to claim 9, and further in view of U.S. Patent No. 6,078,953 (Vaid). The Applicants respectfully traverse this rejection.

As explained above, claim 9 is allowable. Claims 19, 23, 32, and 33 all depend on claim 9. Accordingly, claims 19, 23, 32, and 33 are all allowable as depending on an allowable base claim.

The new claims 50 and 51 are allowable.

The new claims 50 and 51 depend on claim 1. As explained above, claim 1 is allowable; accordingly, claims 50 and 51 are also both allowable as depending on an allowable base claim.

The new claims 50 and 51 do not add new matter. Claim 50 finds support in the original disclosure at, for example, page 13, lines 22-26.

Claim 51 recites, “the control data sent from the sender to the receiver instructs the receiver to initiate sending one or more measurement packets, to change one or more of the measurement packet sizes, inter-measurement packet transmission times and mix of packet sizes, and to stop sending one or more of the plurality of measurement packets.” Claim 51 is directed to those embodiments in which the receiver sends measurement and other data back to the sender. Claim 51 finds support in the original disclosure at page 9, lines 8-13.

Information Disclosure Statements

The Applicants respectfully request that the Examiner consider Information Disclosure Statements that were filed with this case but have not been considered.

IDSs filed and available on PAIR

The following three Supplemental IDSs were filed with this application and are available on Patent Application Information Retrieval:

- Supplemental IDS and Form PTO-1449 filed October 3, 2007
- Supplemental IDS and Form PTO-1449 filed November 5, 2007
- Supplemental IDS and Form PTO-1449 filed December 12, 2007

IDSs filed but not available on PAIR

The following two Supplemental IDSs were filed with this application but are not available on PAIR:

- Supplemental IDS and Form PTO-1449 filed June 6, 2005
- Supplemental IDS and Form PTO-1449 filed July 21, 2005 (The electronic IDSs included with this Supplemental IDS, EFS ID Nos. 85149 and 85150, were both considered.)

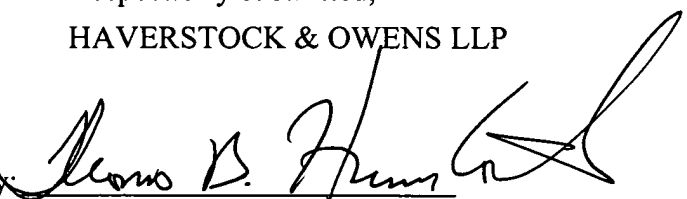
For the Examiner's convenience, copies of these two Supplemental IDSs are attached to this response.

CONCLUSION

For the reasons given above, the Applicants respectfully submit that claims 1-14 and 16-51 are in condition for allowance, and allowance at an early date would be appreciated. If the Examiner has any questions or comments, the Examiner is encouraged to call the undersigned at (408) 530-9700 so that any outstanding issues can be quickly and efficiently resolved.

Respectfully submitted,
HAVERSTOCK & OWENS LLP

Dated: 4-11-08

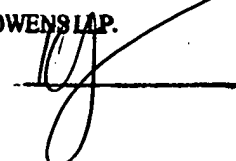
By: 

Thomas B. Haverstock
Reg. No.: 32,571

Attorneys for Applicants

Attachments

CERTIFICATE OF MAILING (37 CFR § 1.8(a))
I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

Date: 4/11/08 By: 
HAVERSTOCK & OWENS LLP.